

UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND (PROVIDENCE)

IN RE:

LEE A. CAPALBO

CASE NO.: 12-11379

CHAPTER 7

Debtor

**MOTION OF BANK OF AMERICA, N.A. FOR RELIEF FROM THE AUTOMATIC
STAY PURSUANT TO 11 U.S.C. § 362**

Bank of America, N.A. (“Creditor”), a secured creditor in the above captioned Chapter 7 proceeding, moves this Court for an order, pursuant to 11 U.S.C. §362(d) and Rule 4001 of the Rules of Bankruptcy Procedure, for relief from the automatic stay of 11 U.S.C. §362(a) so that it may foreclose a Mortgage which it holds on real property known and numbered as 72 Haggerty Hill Road, Saunderstown, Rhode Island. In support of its motion, Creditor states the following:

1. On October 5, 2001, Lee A. Capalbo (“Debtor”) executed and delivered a note (the “Note”, a copy of the pertinent pages of which is attached hereto as Exhibit “A”) to Fleet National Bank. The note was secured by a Mortgage also dated October 5, 2001 and recorded in Book 1405 at Page 130 of the Land Records for the Town of Saunderstown (the “Mortgage”, a copy of the pertinent pages of which is attached hereto as Exhibit “B”) on real property owned by the Debtor and known and numbered as 72 Haggerty Hill Road, Saunderstown, Rhode Island (the “Real Property”). Creditor is the present holder of the Note and the Mortgage as successor-through-merger.

2. Upon information and belief, on April 23, 2012, the Debtor filed a petition for relief under Chapter 7 of the United States Bankruptcy Code and was the current owner of the subject Property.

3. As of July 1, 2012, the arrearage owed by the Debtor on the Note was \$5,572.02, which represents 6 monthly mortgage payments January 5, 2012 through June 5, 2012 in the amount of \$807.67 each; and \$726.00 in legal fees and costs for filing this motion. Creditor estimates that, if a hearing on this motion is held within thirty days of the date of filing, an additional payment and late charge will come due and owing.

4. There is no other collateral securing Creditor's Note.

5. Creditor estimates that the liquidation value is no greater than \$453,644.00 which is 6% less of the market value for cost of sale. (See current Broker's Price Opinion attached hereto as Exhibit "C").

6. As of, 2012 the total outstanding balance owed on the Note held by Creditor was \$43,396.11.

7. According to Debtor's Schedule D, Bank of America, N.A. holds a mortgage in the amount of \$360,389.00 covering the Real Property and Green Tree holds a mortgage in the amount of \$121,528.22 covering the Real Property.

8. The total amount of encumbrances on the Real Property is \$525,313.33.

9. Creditor is entitled to relief from the automatic stay for cause pursuant to 11 U.S.C. §362(d) (1) because the Debtor has not made payments pursuant to the Note, and Mortgage.

10. Creditor is entitled to relief from the automatic stay for cause pursuant to 11 U.S.C. §362(d) (2) because the Debtor has no equity in the Real Property and the Real Property is not necessary for an effective reorganization.

WHEREFORE, Bank of America, N.A. moves that the court enter an order granting Bank of America, N.A. relief from the automatic stay pursuant to 11 U.S.C. §362(d) so that it, and its

successors and assigns, may proceed to exercise its rights pursuant to the Note and Mortgage and applicable state and federal law and to commence a summary process action against occupants of that property and that entry of the order shall be effective immediately upon entry, notwithstanding the provisions of FRBP 4001(a)(3).

BANK OF AMERICA, N.A.

Date: July 5, 2012

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